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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 742

LLOYD BARENBLATT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. 27–46) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on January 3, 1957 (Tr. 240). The petition for a writ of certiorari was filed on February 2, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether it sufficiently appears from the record of the proceedings at which petitioner refused to

answer questions that the House Committee on Un-American Activities, in asking petitioner whether he was or ever had been a member of the Communist Party, was acting pursuant to a valid legislative purpose.

2. Whether the indictment was fatally defective in that—

(*a*) it allegedly failed to state the nature of the "question under inquiry" at the time of petitioner's refusals to answer;

(*b*) it failed to aver specifically that the refusals to answer were "intentional" and "knowing";

(*c*) it charged that the refusals to answer occurred before "a subcommittee" of the Committee on Un-American Activities.

3. Whether it sufficiently appears from the record that the subcommittee considered the reasons advanced by petitioner as to why he should not be required to answer.

4. Whether House Rule XI, defining the powers of the House Committee on Un-American Activities, is unconstitutional "on its face" on the ground that it makes of the Committee a "national arbiter of acceptability of political thought"; and whether 2 U. S. C. 192, read in conjunction with House Rule XI, is unconstitutionally vague.

STATUTE AND RULE INVOLVED

2 U. S. C. 192 (R. S. 102, as amended) and the pertinent provisions of Rule XI of the Rules of the

House of Representatives[1] (as amended by the Legislative Reorganization Act of 1946, c. 753, § 121, 60 Stat. 812, 822, 823, 828) are set forth in Appendix C to the petition for certiorari (Pet. 50–51).

STATEMENT

Petitioner was charged in a five-count indictment (Tr. 201–2), returned in the United States District Court for the District of Columbia, with having refused, in violation of 2 U. S. C. 192 (Pet. 50), to answer five questions, pertinent to the matter under inquiry, put to him by a subcommittee of the Committee on Un-American Activities of the House of Representatives—whether he then was or ever had been a member of the Communist Party (counts 1 and 2), whether he had known one Francis Crowley as a member of the Communist Party (count 3), and whether he (petitioner) had ever been a member, while a student at the University of Michigan, of the "Haldane Club of the Communist Party" (count 4) or of the "Council of Arts, Sciences, and Professions" (count 5). Petitioner, having waived his right to a trial by jury (Tr. 145–146), was found guilty by the court on all counts (Tr. 192) and was sentenced generally to six months' imprisonment and to pay a fine of $250 (Tr. 199, 215). On appeal to

[1] These Rules were adopted by the House at the commencement of the Eighty-Third Congress as the rules of the House for that Congress (H. Res. 5, 83d Cong., 1st sess. (G. Ex. 2, Tr. 42, 44), 99 Cong. Rec. 15, 16, 18, 24). It was during that Congress that the refusals to answer questions here involved occurred (June 28, 1954).

the Court of Appeals for the District of Columbia Circuit, the judgment of conviction was affirmed.

The pertinent facts may be summarized as follows:

On February 25, 1953, the Committee on Un-American Activities of the House of Representatives commenced a series of public hearings in connection with an investigation which it was conducting into "Communist Methods of Infiltration" into the field of "Education" (G. Ex. 7, p. 1; Tr. 50).[2] Immediately prior to interrogating the first witness, Representative Velde, the Committee Chairman, made an opening statement setting forth the nature and purpose of the investigation (*id.*, pp. 1–3).[3] The investigation, the Chairman said, was one of a series of investigations which the Committee had been conducting into "Communists and Communist activities wherever it has substantial evidence of its existence" (*id.*, p. 1). "The purpose of the committee in investigating Communists and Communist activities within the field of education is no greater and no less than its purpose in investigating Communists and Communist activities within the field of labor or any other field" (*id.*, p. 2). Pointing out that "[t]he committee is charged by the Congress with the responsibility of investigating the extent, character, and objects of un-American

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[2] Government Exhibit 7 is the printed transcript (part 1) of the Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 1st sess., February 25, 26, and 27, 1953, entitled *Communist Methods of Infiltration (Education)*.

[3] This statement by the Committee Chairman is reproduced in full as an appendix to the opinion of the Court of Appeals (Pet. 43–46).

propaganda activities in the United States, the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution and all other questions in relation thereto that would aid Congress in any necessary remedial legislation," the Chairman observed (*id.*, p. 2):

> It has been fully established in testimony before congressional committees and before the courts of our land that the Communist Party of the United States is part of an international conspiracy which is being used as a tool or weapon by a foreign power to promote its own foreign policy and which has for its object the overthrow of the governments of all non-Communist countries, resorting to the use of force and violence, if necessary. * * *

The Chairman further observed that, since "Communism and Communist activities cannot be investigated in a vacuum," the "investigation must, of necessity, relate to individuals" (*ibid.*). "[T]he objective of this investigation," the statement concluded, "is to ascertain the character, extent and objects of Communist Party activities when such activities are carried on by members of the teaching profession who are subject to the directives and discipline of the Communist Party" (*id.*, p. 3).

The Committee thereupon proceeded with the taking of testimony (*id.*, p. 3). Witnesses heard on that day and from time to time thereafter during the year 1953 presented to the Committee "facts within their

own knowledge concerning Communist efforts to infiltrate and dominate the teaching profession within the United States" (G. Ex. 9, p. 9; Tr. 61).[4] Illustrative of the testimony was that of the first witness, Robert Gorham Davis, who admitted that he had been, from 1937 to the fall of 1939, a member of a Communist cell on a university campus which included faculty members, teaching fellows, and graduate students (G. Ex. 7, pp. 4, 6). The members of this cell, Davis testified, received instructions and directives from the Communist Party through a paid functionary of the Party (*id.*, pp. 8, 35). From time to time, they were addressed by Party functionary Philip Frankfeld, whose purpose it was to "educate" them politically (*id.*, pp. 8, 10).[5] They would seek to attain positions of leadership in various organizations for the purpose of seeing to it that the policies of such organizations "would be as close to the policies desired by the Communist Party as possible" (*id.*, p. 9). Their primary target in this respect was the local "Teachers' Union" (*id.*, pp. 10, 30). Prior to meetings of the Teachers' Union, the members of the cell used to discuss the policies which they would urge on the Union and the candidates which they would propose and support (*id.*, pp. 9, 11). They would also "endeavor to control the selection of delegates

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[4] Government Exhibit 9 is the *Annual Report of the Committee on Un-American Activities for the Year 1953* (H. Rep. No. 1192, 83d Cong., 2d sess.).

[5] Frankfeld was one of the defendants convicted in a Smith Act trial. See *Frankfeld* v. *United States*, 198 F. 2d 679 (C. A. 4), certiorari denied, 344 U. S. 922.

from the local Teachers' Union" to "district" and "national conventions" (*id.*, p. 11). At a caucus of the Communist members of the Teachers' Union preceding a certain convention in New York City which Davis attended, Jack Stachel addressed the group for the purpose of "determin[ing] the policies of the Communists" (*id.*, pp. 19–21).[6]

Davis testified that the following "sum[ming] up" of "the substance" of his testimony by Committee member Jackson was accurate: that the Communist Party (1) sought to "recruit teachers and professors" into the Party, (2) "la[id] down certain broad policies which these teachers and professors were expected to follow," (3) expected such recruited teachers to "infiltrate other teacher groups with the idea of putting forward policies and directives enunciated by the Communist Party," (4) "exercise[d] generally, on behalf of the Communist Party, what influence they could," and (5) "influence[d], to the extent possible, the election of group leaders * * * who were individuals known to be favorable to the policies of the Communist Party" (*id.*, p. 41).

During 1954, the Committee continued its inquiry into Communism in education. On June 28, 1954, Francis Crowley testified before the Committee, *inter alia*, that in 1950 he and petitioner had been fellow members of the "Haldane Club of the Communist Party," consisting of graduate students and teaching

[6] Stachel was one of the defendants in the Smith Act prosecution which culminated in *Dennis* v. *United States*, 341 U. S. 494.

fellows at the University of Michigan (G. Ex. 8, pp. 5773, 5777–8; Tr. 58).[1] On the same day, petitioner, appearing as a witness before the Committee, admitted that he had been a teaching fellow at the University of Michigan from 1948 to 1950 (*id.*, p. 5813) and that he knew Crowley (*id.*, p. 5802), but refused to state, after having been specifically ordered to do so, whether he then was or ever had been a member of the Communist Party (*id.*, pp. 5805–6, 5812) and to answer the other questions forming the subject-matter of the various counts of the indictment (*id.*, p. 5812; see supra, p. 3). In so refusing, he specifically disclaimed reliance on the Fifth Amendment's prohibition against compulsory self-incrimination (*id.*, pp. 5805, 5806). His refusals were based, he said, on his belief that the questions asked involved an inquiry into his "political beliefs," "religious beliefs," "personal and private affairs," and "associational activities," and that any such inquiry was "beyond the powers of this committee" (*id.*, pp. 5806, 5807).

ARGUMENT

1. Petitioner's principal contention—that the Committee lacked a valid legislative purpose in asking the questions which he refused to answer (Pet. 12–20)—is refuted by the record. As pointed out in the Government's brief on the merits (pp. 28–30) in

[1] Government Exhibit 8 is the printed transcript of the Hearings before the Committee on Un-American Activities, House of Representatives, 83d Cong., 2d sess., June 28 and 29, 1954, entitled *Communist Methods of Infiltration (Education—Part 9)*.

Watkins v. *United States,* No. 261, this Term, the purpose of a congressional inquiry must be gathered from the record of the committee hearing and the committee's authorization, hospitably read. The record of this Committee's 1953–54 inquiry into Communism in education, pertinent portions of which have been summarized, *supra,* at pp. 4–8, shows that the purpose of the Committee, in the series of hearings of which petitioner's interrogation was an integral part, was to inquire into the facts concerning Communist infiltration into the field of education, in order to determine what remedial legislation, if any, was necessary.

It certainly can no longer be denied, and we do not understand that petitioner now questions, that Congress has power to inquire into, and to legislate with respect to, the subjects of Communism and the Communist Party. See cases cited at p. 61 of our brief in No. 261. But if Congress has power to inquire into these subjects, as was observed in *Barsky* v. *United States,* 167 F. 2d 241, 246 (C. A. D. C.), certiorari denied, 334 U. S. 843:

> * * * it has power to identify the individuals who believe in Communism and those who belong to the party. The nature and scope of the program and activities depend in large measure upon the character and number of their adherents. Personnel is part of the subject.

"If Congress can legislate against a threat of communism which is reasonably apprehended," as the

Court of Appeals pointed out in this case, reaffirming its *Barsky* decision (Pet. 41):

> * * * it can, consistently with the meaning of the Constitution and the language in the *Quinn* case [*Quinn* v. *United States*, 349 U. S. 155] quoted above,[8] inquire of a witness whether or not he is a communist, subject to the constitutional limitations imposed by the privilege against self-incrimination.

This is not to say that Congress has any "general power to inquire into political beliefs and associations" (opinion below, Pet. 42). But it clearly does have the power to inquire into the nature, character, and activities of, the seriousness of the danger emanating from, and all other aspects (including the number and identity of its members) of the particular organization known as the Communist Party of the United States. See cases cited at pp. 63–64 of our *Watkins* brief. Congress, in short, as said by the court below (Br. 64):

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[8] The language referred to is as follows (349 U. S. at 160–161):

"There can be no doubt as to the power of Congress, by itself or through its committees, to investigate matters and conditions relating to contemplated legislation. This power, deeply rooted in American and English institutions, is indeed co-extensive with the power to legislate. Without the power to investigate—including of course the authority to compel testimony, either through its own processes or through judicial trial—Congress could be seriously handicapped in its efforts to exercise its constitutional function wisely and effectively.

"But the power to investigate, broad as it may be, is also subject to recognized limitations. It cannot be used to inquire into private affairs *unrelated to a valid legislative purpose* * * *." [Emphasis added by court below.]

> * * * does have that power [to inquire into political beliefs and associations] where the answer to the question posed can be and is regarded by Congress as having value in the exercise of legislative duty. Congress can legislate on the internal security dangers it has declared to have arisen from the activities of the Communist Party in this country. It can and it has.

The fact that the focus of inquiry here involved was the field of education—as distinguished, for example, from the labor movement, government, or the armed forces—does not make these settled principles inapplicable. The Committee, as its Chairman emphasized at the outset of the hearings (Ex. 7, p. 1), was not investigating education as such, but Communist penetration into this field. "[I]t is not now the purpose of this committee," he pointed out, "to investigate education or educational institutions, as such. The committee will follow its long-established policy of investigating Communists and Communist activities wherever it has substantial evidence of its existence. * * * The purpose of the committee in investigating Communists and Communist activities within the field of education is no greater and no less than its purpose in investigating Communists and Communist activities within the field of labor or any other field" (*id.*, pp. 1–2; appendix to opinion below, Pet. 43–44).

The problem of Communist infiltration into the field of education is certainly one with respect to which Congress can and has legislated. For example, § 228 of the Veterans' Readjustment Assistance Act of 1952, 66 Stat. 667, 38 U. S. C. 933, prohibits the payment by

the Veterans Administration of any educational and training allowance to any otherwise eligible veteran who enrolls for any course in any educational institution which is listed by the Attorney General as totalitarian, Fascist, Communist, or subversive. This legislation was enacted pursuant to this Committee's recommendation that Congress should "[w]ithhold all Federal financial support from any educational institution which permits members of its faculty to advocate communism, fascism, or nazism as a substitute for our form of government to the student body * * *" (*Annual Report of the Committee on Un-American Activities for the Year 1953,* H. Rep. 1192, 83d Cong., 2d sess. (G. Ex. 9), pp. 144–5). The subject, moreover, would clearly be germane to congressional consideration of the various pending bills providing for federal aid to education, as well as to the subject of grants-in-aid to, or contracts with, institutions of higher learning.

In addition, the record of the hearing at which petitioner's refusals to answer occurred shows that immediately following those refusals, Committee member Doyle, with the concurrence of Chairman Velde, observed that (G. Ex. 8, p. 5813):

> * * * the record should show that at this time there are pending before the United States Congress several active bills dealing with the question of subversive activities, dealing with the question of the Communist Party, * * * and I would like the record of this hearing of this committee to especially show * * * that this witness [petitioner] and these other witnesses could help us in line with our * * * responsi-

> bility to have hearings with reference to recommendations for legislation in this area * * *.

Chairman Velde added that, on the basis of information in the Committee's files, it was clear that (*id.*, pp. 5813–4):

> * * * the witness [petitioner] has information about Communist activities in the United States of America, particularly while he attended the University of Michigan * * * which * * * would be very valuable to this committee and its work.

Petitioner's contention that the Committee's purpose in questioning him was not a legitimate one is based solely on a single, isolated, sentence in the Committee's 1954 *Annual Report* (H. Rep. No. 57, 84th Cong., 1st sess. (G. Ex. 10)), in which it was stated that "[t]he 1954 hearings were set up by the committee in order to demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success" (G. Ex. 10, p. 15; Pet. 12). This reliance, however, is misplaced. A purpose on the part of a congressional investigating committee to inform the public of pertinent facts relating to an area of inquiry can obviously coexist with its primary purpose of acquainting the Congress with those facts as part of the general process of investigation in aid of legislation. The Court of Appeals correctly said, with reference to the statement in the *Annual Report* on which petitioner relies (Pet. 36):

> * * * This statement, in context, is part of an extended discussion of the whole activity of this

committee and cannot be regarded as a statement of the sole or primary objective and, however it may conflict with the broader objectives, does not justify reversal of appellant's conviction. Courts must presume congressional investigations to have valid legislative purposes. *Townsend* v. *United States*, 95 F. 2d 352, *cert. denied*, 303 U. S. 664 (1938). Since the statement relied on does not negate the presence of other, and we think legitimate, purposes of the inquiry, the presumption of valid purposes is still operative and unrebutted. A reading of the full report indicates that the primary purposes of the inquiry were in aid of legislative processes.

Since "the primary purposes of the inquiry were in aid of legislative processes," as the record as a whole indicates, the fact that an incidental, coexistent purpose may have been to "demonstrate to the people of Michigan the fields of concentration of the Communist Party in the Michigan area, and the identity of those individuals responsible for its success" could not have rendered the questions illegitimate, so as to have justified petitioner's refusal to answer them, even if it be assumed, *arguendo*, that the latter purpose, had it been the sole one, would not be valid.

2. Also without merit are petitioner's contentions that the indictment was fatally defective on several grounds (Pet. 21–23).

(*a*) First, it is argued, there was a fatal "failure to allege the question under inquiry" (Pet. 21).

The indictment alleged that the Committee, on June 28, 1954, "was conducting hearings, pursuant to Pub-

lic Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 828), and to H. Res. 5, 83d Congress," and that petitioner appeared and refused to answer questions "which were pertinent to the question then under inquiry" (Tr. 201). The reference to "Public Law 601, Section 121, 79th Congress, 2d Session (60 Stat. 828)" and "H. Res. 5, 83d Congress" was a reference to the House Rule (XI) under which the Committee operates. See *supra*, pp. 2–3, including fn. 1; Pet. 50–51. That Rule confers on the Committee the authority to investigate "the extent, character, and objects of un-American propaganda activities in the United States," "the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution," and "all other questions in relation thereto that would aid Congress in any necessary remedial legislation" (Pet. 51).

It is submitted that this was a sufficiently explicit statement of the "question under inquiry" to satisfy the requirement of Rule 7 (c) of the Federal Rules of Criminal Procedure (see Pet. 51), which states, in pertinent part, that "[t]he indictment or information shall be a plain, concise and definite written statement of the essential facts constituting the offense charged."* Furthermore, petitioner has never

* *United States* v. *Lamont*, 236 F. 2d 312 (C. A. 2), relied on by petitioner (Pet. 21), is distinguishable. That case involved a refusal to answer questions before the Permanent Subcommittee on Investigations of the Senate Committee on Government Opera-

contended, and does not now contend, that he was unaware of the nature of the "question under inquiry" before the Committee. Under Rule 52 (a), F. R. Crim. P., therefore, the alleged defect, even if it were in fact such, should be disregarded."

(*b*) Secondly, it is urged (Pet. 21–23), there was a fatal "failure to allege an intentional, 'knowing' refusal to answer" (Pet. 21). But the indictment did charge that petitioner "unlawfully" refused to answer the questions (Tr. 201), and for the refusals to have been unlawful they had to be deliberate. *Quinn* v. *United States,* 349 U. S. 155, 165–166. The intentional character of the refusals was thus charged implicitly. *United States* v. *Deutch,* 235 F. 2d 853 (C. A. D. C.). In any event, petitioner does not claim that he was in any way misled or prejudiced by the failure of the indictment to use the word "intentional" or "knowing," nor does he suggest that his refusals were not in fact intentional and deliberate. In the light of Rule 52 (a), F. R. Crim. P.

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tions. The court held that, since the questions which Lamont had refused to answer did not on their face appear to have been in any way related to the scope of the committee's authority, the indictment was insufficient for failure to set forth in what way they were germane (236 F. 2d at 315–317). The court observed that "[t]he result might well be different were this a case of a committee created by Congress to hold hearings for a specific purpose, with the inquiry in question apparently falling within the assigned purpose" (236 F. 2d at 316, n. 6, citing, *inter alia*, *United States* v. *Josephson*, 165 F. 2d 82 (C. A. 2), certiorari denied, 333 U. S. 838, which the opinion described parenthetically as relating to "un-American activities").

[9] Rule 52 (a) provides that "Any error, defect, irregularity or variance which does not affect substantial rights shall be disregarded."

(see fn. 10, *supra*, p. 16), therefore, the present contention is clearly without substance. See also *Hagner v. United States*, 285 U. S. 427, 431.[11]

(*c*) Finally, it is contended, the indictment was fatally deficient in that it charged that petitioner's refusals to answer occurred before "a subcommittee" of the Committee on Un-American Activities, whereas the statute involved (2 U. S. C. 192; see Pet. 50) "defines the crime as a refusal to answer before a 'committee'" (Pet. 23). But clearly, as pointed out by the Court of Appeals (Pet. 31), "Congress intended the word 'committee' in its generic sense, which would include subcommittees." This conclusion flows from a consideration of the evident purpose of 2 U. S. C. 192, which, as the Court of Appeals further observed, "was to discourage the impairment of the vital investigative function of Congress," which "is as often committed to subcommittees as it is to full committees of Congress, as indeed it must be" (Pet. 30).

Moreover, petitioner's contention is directly refuted by the terms of the companion section to 2 U. S. C. 192, 2 U. S. C. 194, which provides for certification of the relevant facts to the appropriate United States

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[11] "The rigor of old common law rules of criminal pleading has yielded, in modern practice, to the general principle that formal defects, not prejudicial, will be disregarded. The true test of the sufficiency of an indictment is not whether it could have been made more definite and certain, but whether it contains the elements of the offense intended to be charged, 'and sufficiently apprises the defendant of what he must be prepared to meet, and, in case any other proceedings are taken against him for a similar offence, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction.'"

Attorney for prosecution "[w]henever a witness summoned as mentioned in section 192 of this title * * * refuses to answer any question pertinent to the subject under inquiry before either House, * * * or any committee *or subcommittee* of either House * * *" (emphasis added).

3. Petitioner next contends (Pet. 23–24) that there was a "failure to prove contumacy" (Pet. 23) because, allegedly, "[i]t appears from the record that the subcommittee never even considered the objections to the questions offered by the petitioner" (Pet. 24). This contention is fully discussed in the opinion of the Court of Appeals (Pet. 31–35), and is clearly untenable. Petitioner orally announced, in the presence of all members of the subcommittee, that he was refusing to answer the Committee's questions on the ground that, in his judgment, the Committee lacked "the power and jurisdiction * * * to inquire into my political beliefs," "my religious beliefs," "any other personal and private affairs," and "my associational activities" (G. Ex. 8, pp. 5802, 5806). The Committee was thus clearly apprised of the nature of petitioner's "objections" to the questions before he was directed to answer.

The substance of petitioner's present complaint is simply that he was not permitted to read to the Committee a document, aptly described in the record as "an 11-page legal brief" (*id.*, p. 5804), purporting to substantiate his contention with legal authority. That document, bearing the title "Objection to Jurisdiction of the Committee on Un-American Activities and to

Questions Propounded by It" (*id.* p. 5807), was received by the Committee and was incorporated into the record of the hearing (*id.*, pp. 5807–5810). It is, indeed, a legal brief, replete with legal authorities and quotations from court decisions, which allegedly supported petitioner's contention, orally communicated by him to the Committee's members, that the Committee was without "power and jurisdiction" to inquire into his "political beliefs," "religious beliefs," "other personal and private affairs," and "associational activities." Since it is clear from the record that the essential nature and substance of petitioner's objections to the Committee's questions were in fact made known, the Court of Appeals was correct in concluding that "the courts cannot require a committee to make a detailed study of what may be fairly described as a lengthy legal brief before it directs a witness to answer * * *" (Pet. 34).

Furthermore, the record indicates that, at the time petitioner sought to read the document in question to the Committee, at least one member had in fact read it and was "well acquainted with what is in it" (G. Ex. 8, p. 5806). The Chairman indicated that, while he himself had "not had an opportunity to read the full statement," he would "take the word of" the member who had read it as to the nature of its contents (*id.*, p. 5807). The statement was, as we have noted, received in evidence and spread on the record of the hearing. In these circumstances, there can be no question that it was a proper exercise of discretion for the Committee members to decline to permit petitioner to read his "brief" to them.

4. Petitioner also contends (Pet. 10–11) that the Rule defining the powers of the Committee on Un-American Activities (House Rule XI; see Pet. 50–51) is unconstitutional "on its face" because it requires that the Committee, in order to be able to investigate "subversive" and "un-American" propaganda, become a "national arbiter of acceptability of political thought" (Pet. 10). Substantially the same contention has, as petitioner recognizes (*ibid.*), repeatedly been rejected by the courts. *E. g., Barsky* v. *United States,* 167 F. 2d 241, 247–251 (C. A. D. C.), certiorari denied, 334 U. S. 843; *United States* v. *Josephson,* 165 F. 2d 82, 87–88 (C. A. 2), certiorari denied, 333 U. S. 838; *Dennis* v. *United States,* 171 F. 2d 986, 987–988 (C. A. D. C.), affirmed on other grounds, 339 U. S. 162; *Lawson* v. *United States,* 176 F. 2d 49, 52–53 (C. A. D. C.), certiorari denied, 339 U. S. 934; *Morford* v. *United States,* 176 F. 2d 54, 56 (C. A. D. C.), reversed on other grounds, 339 U. S. 258; *Marshall* v. *United States,* 176 F. 2d 473, 474 (C. A. D. C.), certiorari denied, 339 U. S. 933. See also the Government's brief in *Watkins* v. *United States,* No. 261, this Term, at pp. 61–68.

A related contention, barely mentioned in the petition (Pet. 11–12), is that 2 U. S. C. 192, "read in conjunction with" House Rule XI, is unconstitutionally vague. This contention has likewise been repeatedly rejected by the courts. *E. g., Barsky* v. *United States, supra,* 167 F. 2d at 247–248; *Dennis* v. *United States, supra,* 171 F. 2d at 987–988; *Lawson* v. *United States, supra,* 176 F. 2d at 52–53; *Morford* v. *United States, supra,* 176 F. 2d at 56; *Marshall* v.

United States, supra, 176 F. 2d at 474; *Emspak* v. *United States,* 203 F. 2d 54, 56 (C. A. D. C.), reversed on other grounds, 349 U. S. 190; see also *United States* v. *Josephson, supra,* 165 F. 2d at 87–88. In *Emspak* and its companion cases, the issue was argued but was not reached by this Court (see *Emspak,* 349 U. S. 190, 202; *Quinn* v. *United States,* 349 U. S. 155, 170; *Bart* v. *United States,* 349 U. S. 219, 223). As applied to petitioner, we submit that the statute and rule, read together, are clearly valid for the reasons set forth in the Brief for the United States in *Emspak,* No. 9, Oct. Term, 1954 (No. 67, Oct. Term, 1953), pp. 66–71, 78–95. The same issue is involved in *Watkins* v. *United States,* No. 261, this Term, and the Brief for the United States in that case, at pp. 71–73, summarizes our arguments on the point.

CONCLUSION

The case was correctly decided, and no conflict of decisions is presented. While the case is similar in several respects to *Watkins* v. *United States,* pending on writ of certiorari, No. 261, this Term,[12] it is distinguishable from *Watkins* in the important respect, among others, that the trial court in the instant case, unlike the trial court in *Watkins,* did not exclude as inadmissible any proffered evidence allegedly bearing on the question of the presence *vel non* of a valid legislative purpose on the part of the committee in asking the questions which the accused was charged with having unlawfully refused to answer. See pp.

[12] See, also, *Flaxer* v. *United States,* pending on petition for a writ of certiorari, No. 462, this Term.

42–53 of the Brief for the United States in *Watkins*.

For the reasons given above, it is submitted that the petition for a writ of certiorari should be denied. However, the Court may wish to withhold action on the petition until the disposition of the *Watkins* case.

Respectfully submitted.

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